

Serial No. 10/773,250

Attorney Docket # 2270-001

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IN the DRAWINGS

Please replace Figures 4a, 4b, 4c and 5a and 5b currently on file with amended Figures 4a, 4b, 4c and 5a and 5b enclosed herein.

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REMARKS

In the SPECIFICATION

Applicant has amended the specification to more clearly identify the arrangement of the stacked modules as shown in the drawings as originally filed. Applicant believes that the amendments are reasonably inferred by the Figures as originally filed and that no new subject matter had been added as a result of this amendment.

In the DRAWINGS

Applicant has amended the drawings as suggested by Examiner. Replacement sheets containing the amended drawings and amended sheets showing the changes made are enclosed herein.

In the CLAIMS

Applicant wishes to thank Examiner for allowance of claims 13 and 14.

Applicant has cancelled claims 8 and 12 and has added new claims 15-18.

Examiner has objected to claims 4-6, 9 and 13 because of the following informalities:

Regarding claim 4, "means for pivotal attachment" in line 2 should be changed to --attachment means—to maintain consistent terminology;

Applicant has amended claim 3 from which claim 4 depends to change "attachment means" to – means for pivotal attachment—. Applicant believes the terminology is now consistent.

Regarding claim 5, "attached" in line 3 should be deleted;

As recommended by Examiner, Applicant has removed "attached" at line 3.

Regarding claim 6, "support" in line 2 should be --supports--;

As recommended by Examiner, "support" in line 2 has been changed to – supports—.

Regarding claim 9, "the" needs to be inserted before "two" in line 13, "subsequent" in line 14 and "successive" in line 16 should be deleted;

As recommended by Examiner, "the" has been inserted before "two" in line 13 and "subsequent" at line 14 and "successive" at line 16 have been deleted and replaced with the word "like".

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Regarding claim 13, "successive" in line 13 should be deleted, "the first fence module" in line 20 should be —a first fence module—as a first fence module has not been previously recited and the fourth occurrence of "the" in line 20 should be —a— as a subsequent fence module has not been previously recited and "the ground" in line 22 should be —a ground—.

As recommended by Examiner, "successive" at line 13 has been deleted, "the first fence module" at line 20 has been changed to —a first fence module—, the fourth occurrence of "the" in line 20 has been changed to —a— and "the ground" in line 22 has been changed to —a ground—.

Examiner has rejected claims 1-12 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the metes and bounds of the claim is unclear.

Applicant has amended claim 1 to more clearly define that only a single module is being claimed, that module having the feature of being stackable with like modules in the manner claimed.

Regarding claim 3, the limitation "a first end support and a second end support" makes unclear whether these are different end supports than those previously recited in claim 1, line 3.

Applicant has amended claim 3 to more clearly indicate that the first and second end supports are the same as the two end supports in claim 1.

Regarding claims 2 and 4-7, the claims depend from claim 1 and therefore are indefinite.

Applicant has amended claim 1 to more clearly claim a single module. Applicant has also modified claims 2 and 4 to remove positive recitation of additional modules and has instead introduced "like modules" which Applicant believes is an acceptable practice to indicate the module has features which permit some interaction with other modules which are the same.

Applicant believes that claims 5-7 are directed to a single module and are therefore in condition for allowance.

Regarding claim 8, the "subsequent fence modules" are clearly positively being required.

Applicant has canceled claim 8.

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Regarding claim 9, it is not clear what disclosed structure actually constitutes the claims "means for pivotal attachment".

Applicant has modified claim 9 to more clearly indicate that the means for pivotal attachment are connected between fence modules.

Regarding claim 10, note the comments above with respect to claim 9. Further, it is unclear as to how the "first" and "subsequent" modules can be "rotatable about the pivotal attachment means" if such "means" is in whole or in part constituted by the loops 16 since the modules are not rotatable with respect to the loops. It is suggested that the claim define the pin 17 and then state that the modules are rotatable about the pin.

Applicant has amended claim 10 to more clearly indicate that each end of the fence modules has loops formed thereon and that the loops are suitably spaced to permit vertical alignment of the loops between successive modules. A single pin is claimed which is passed through the vertically aligned loops completing the attachment and permitting rotation about the single pin.

Regarding claims 11 and 12, the claims depend from claim 9 and therefore are indefinite.

Claim 9 has been amended and therefore Applicant believes claim 11 now depends from a claim which is not indefinite.

Applicant has cancelled claim 12.

Examiner has objected to claim 13 under 37 CFR 1.75 as being a substantial duplicate of claim 12.

Applicant has canceled claim 12.

Examiner has rejected claim 1 under 35 USC 102(b) as being anticipated by Lape, 257,168.

Applicant has amended claim 1 to more clearly describe stacking as being with the fence module supported on the plurality of span members for forming a substantially vertical stack when stacked with like modules.

Respectfully, Applicant wishes to traverse Examiner's rejection of claim 1 based on Lape. Lape teaches a ladder. A ladder is not a fence. Applicant believes that one would not look to a ladder to teach all of the elements of a fence.

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That having been said, Applicant wishes to point out to the Examiner the following:

- Lape cannot stack as contemplated by the instant invention, firstly because there are span members formed on both A-A' and B-B' which would not permit a second ladder to be stacked within the space between the end supports formed by A-A', B-B' and D-D' as described by Examiner with respect to Lape, and as claimed in Applicant's claim 1; and
- If a second ladder were inserted through the open end of Lape, that is between A-A' and B-B', adjacent D-D', it could only be partially inserted as member C-C' and D-D' on each of the ladders, attached at an outside edge of A-A' and an inside edge of B-B' would impinge the space and prevent the second ladder from being inserted further, the resulting assemblage not being a "stack" at all but is offset. Further insertion of additional ladders would result in an unstable, horizontally extending pile of interleaved ladders.

Simply Lape is missing the elements of a horizontal and vertical member in one plane with an angle arm offset inwardly therefrom and therefore cannot achieve the stacking of Applicant's fence module.

Examiner has rejected claim 1 under 35 USC 102(b) as being anticipated by McKinnon, 1,545,909

Applicant has currently amended the specification and claim 1 to more clearly define that each fence module (or modules) is capable of being stacked with like modules, the module being oriented to be supported on the plurality of span members and forming an upward stack in the nested arrangement shown in Figures 4b, 4c and 5b as originally filed and as amended herein to correct informalities.

Applicant believes that no new matter has been added as a result of the amendment, the subject matter having been shown in the figures as originally filed.

McKinnon cannot stack in a substantially vertical nested arrangement nor is stacking in this manner contemplated by McKinnon who provides an alternate method and accommodation for stacking. Applicant wishes to direct the Examiner's attention to column 3 lines 20-26 wherein McKinnon states that removing the fastening bolts from the various parts of the fence permits the fence to be disassembled for packing in a small space. McKinnon does not contemplate stacking the assembled fences as claimed in the instant application.

Secondly, the physical arrangement of McKinnon's fence makes stacking modules, nested within one another, impossible. Applicant wishes to bring to Examiner's attention that the horizontal member 11 is not in the same plane at

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each of its ends and cannot therefore be stacked in the same manner as Applicant's fence module. Applicant has provided **Appendix A** which illustrates an interference X created by horizontal member 11 into the space formed between the end supports which would require that McKinnon be offset as shown in **Appendix B**, also attached hereto in order to be "stacked". In the offset arrangement necessitated by the horizontal member's interference in the space between the end supports, any stack formed would eventually topple, having stacked only a relatively small number of modules.

McKinnon's fence panels supported, such as on the ground or on a truck bed for transport, on the span members 2 to which the pickets 6 are attached would not stack nested within one another as contemplated by Applicant.

In contrast, Applicant has provided **Appendix C** and **Appendix D** which are photographs of fence modules produced according to Applicant's invention. Clearly, unlike McKinnon, stacking of a large number of modules is possible without creating an offset stack and thus, the stability of the stack is far greater than that of McKinnon.

Applicant believes that amended claim 1 is clearly distinguished over McKinnon and is therefore in condition for allowance.

Examiner has rejected claims 2 and 6 under 35 USC 103(a) as being unpatentable over Lape, 257,168 , as applied to claim 1, and further in view of Kummerlin et al, 4,502,564.

Kummerlin teaches a stepladder with spacers between the legs and the steps.

Respectfully, the addition of a spacer positioned between the horizontal member and vertical or angled member would not assist in making the ladders of Lape stackable as contemplated by Applicant. As horizontal member D-D' or C-C' is attached in one plane relative to A-A' and a second plane relative to B-B', the addition of a spacer would only serve to either impinge further on the space between or to maintain the space if spacers are used at both ends.

Further, Kummerlin would not stack in a nested manner with or without spacers.

Thus, one would not look to Kummerlin to find those elements which are not taught by Lape.

Applicant believes that claims 2 and 6 are distinguished over the prior art cited and are in condition for allowance.

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Examiner has rejected claims 3, 4, and 8 under 35 USC 103(a) as being unpatentable over McKinnon, 1,545,909 as being applied to claim 1 and further in view of Faught, 300,455.

Applicant has cancelled claim 8.

Applicant respectfully submits that claims 3 and 4 depend from claims which Applicant believes are in condition for allowance, claim 1 being distinguished from apparatus of McKinnon as previously discussed.

Applicant respectfully wishes to point out to the Examiner that McKinnon does not teach or contemplate joining modules together to create an enclosure, as the purpose of the fence taught by McKinnon is to prevent snow from building up on a roadway. The fence of McKinnon is created using discreet panels of undetermined length to form a substantially linear fence. Further, McKinnon does not teach a fence panel which further comprises means for joining the linearly arranged panels or modules to one another. Thus one would not contemplate using means for pivotal attachment.

Applicant would not look to Faught to teach those elements which are missing from McKinnon.

Applicant believes that claims 3 and 4 are in condition for allowance.

Examiner has rejected claim 5 under 35 USC 103(a) as being unpatentable over McKinnon, 1,545,909 in view of Faught, 300,455, as applied to claims 3, 4 and 8 and further in view of Walter, 197,806.

As previously discussed, Applicant believes that claim 1 from which claim 5 ultimately depends is distinguished over McKinnon and therefore one would not look to Faught and to Walter to provide those elements which are missing from McKinnon.

Applicant believes that claim 5 is in condition for allowance.

Examiner has rejected claim 6 under 35 USC 103(a) as being unpatentable over McKinnon 1,545,909 in view of Neely, 1,214,705.

As previously discussed, Applicant believes that claim 1 from which claim 6 depends is distinguished over McKinnon and therefore one would not look to Neely to provide those elements which are missing from McKinnon.

Applicant believes that claim 6 is in condition for allowance.

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Examiner has rejected claim 7 under 35 USC 103(a) as being unpatentable over McKinnon 1,545,909, as applied to claim 1, and further in view of St. John, 5,533,714.

As previously discussed, Applicant believes that claim 1 from which claim 7 depends is distinguished over McKinnon and therefore one would not look to St. John to provide those elements which are missing from McKinnon.

Applicant believes that claim 7 is in condition for allowance.

Applicant has added new claims 15-18 which claim a plurality of fence modules, according to Applicant's invention. Applicant believes that the new claims embody subject matter which was disclosed in the application as filed and which is claimed in claims examined by Examiner and therefore believes that the new claims merit consideration in this response.

Applicant wishes to thank the Examiner for the allowance of claim 13 and 14 and for the conditional allowance of claims 9-12 if rewritten or amended to overcome the rejections) under 35 USC 112, 2nd paragraph, set forth in the Office Action.

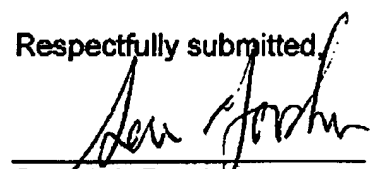
Applicant believes that no new matter has been introduced as a result of the amendments enclosed herein. Reconsideration and allowance of claims 1-7, 9-11 and 13-18 now on file is respectfully requested.

Date: Sept 6/06

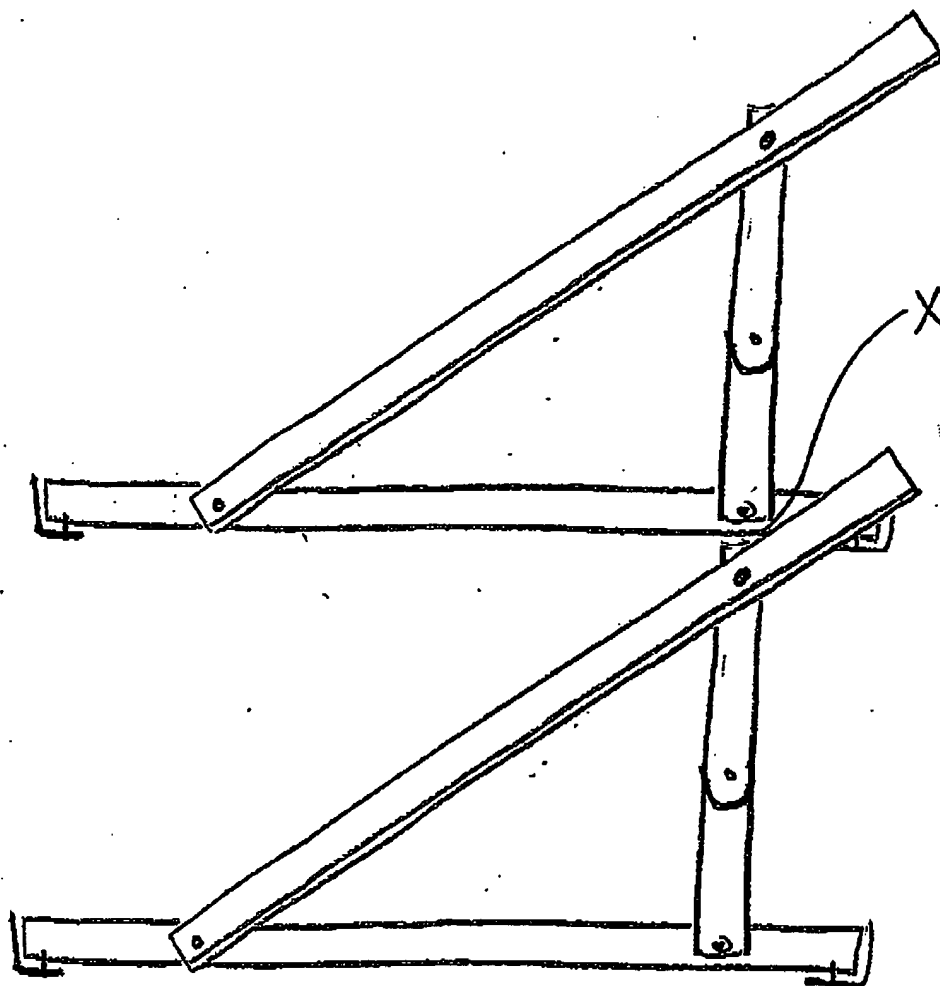
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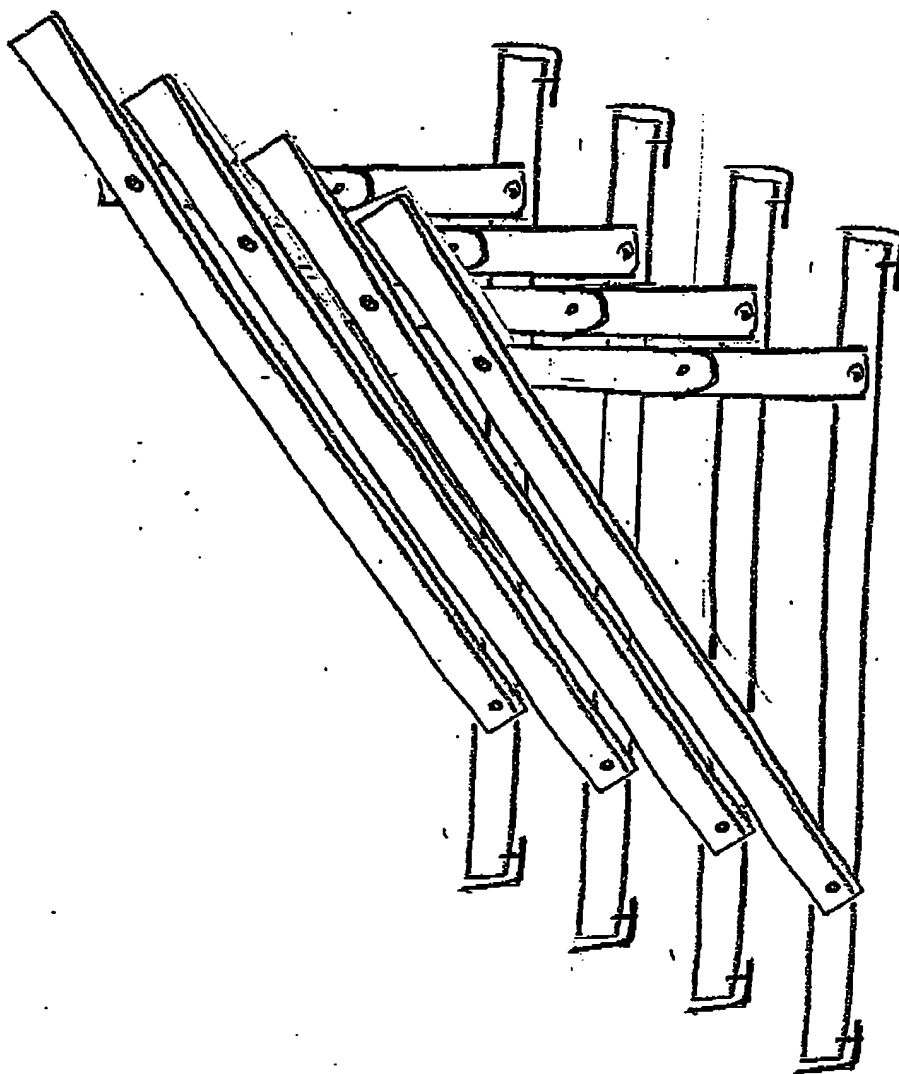
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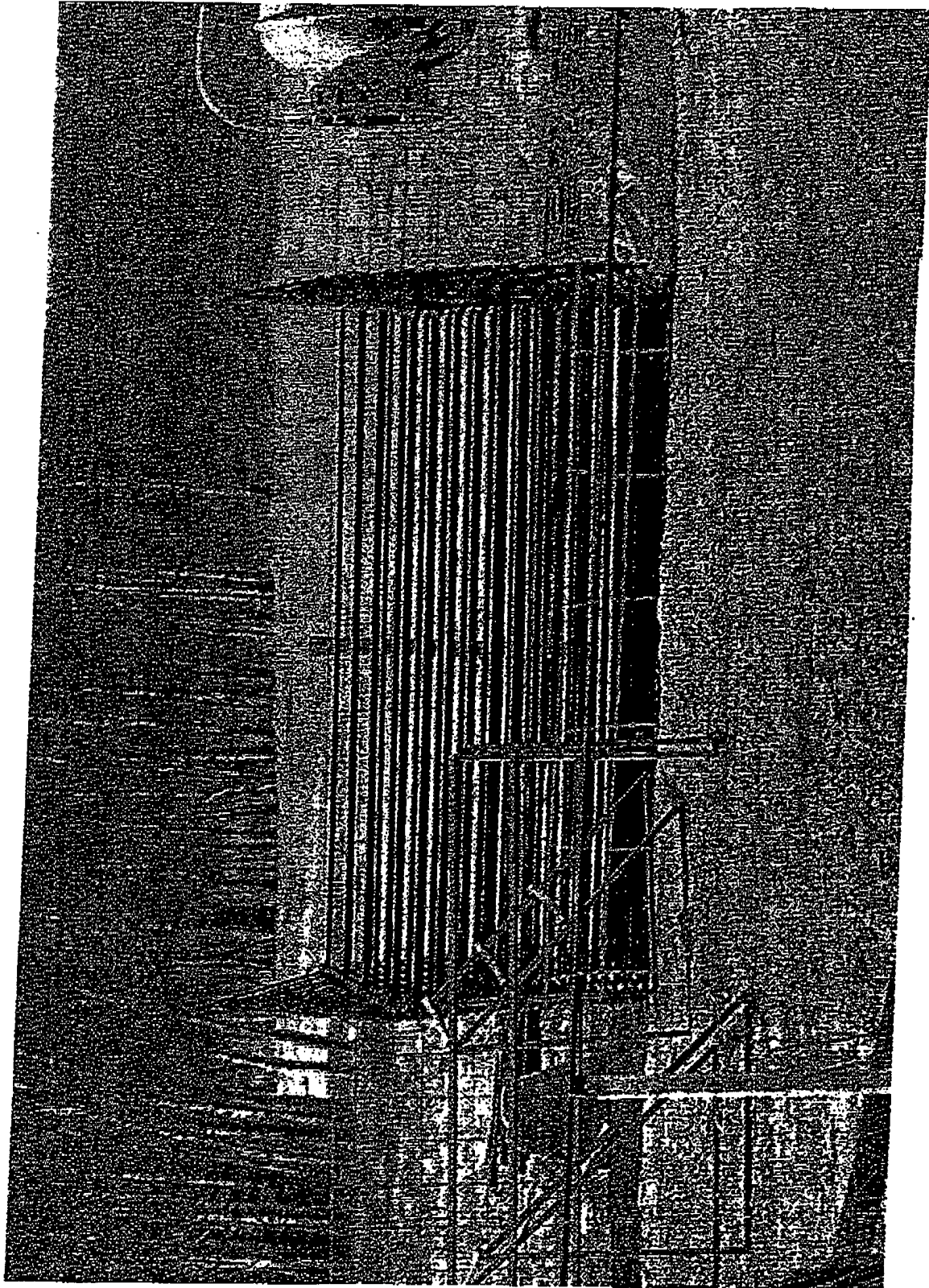
APPENDIX A

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APPENDIX B

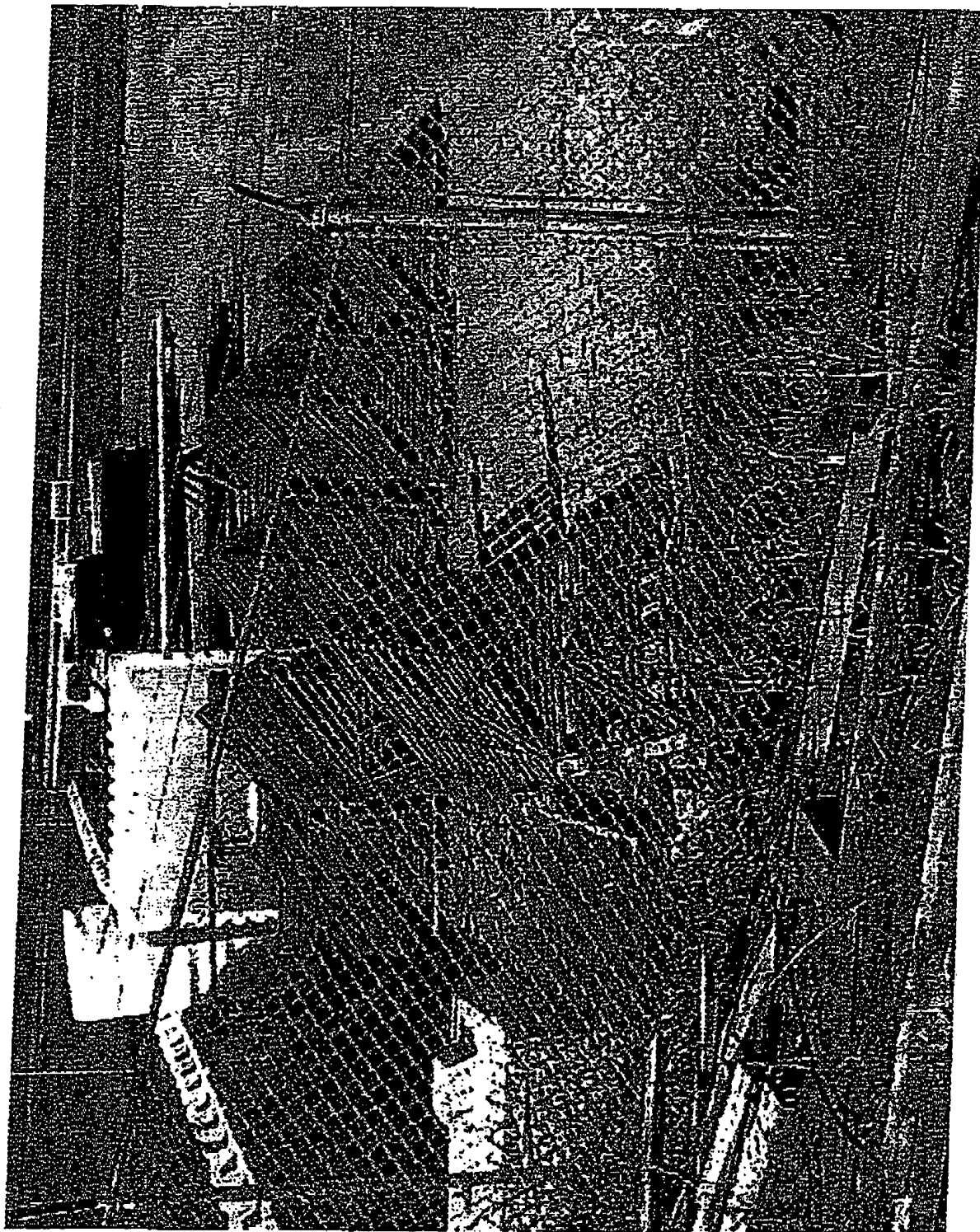


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APPENDIX C

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APPENDIX D